IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITON NO.698 OF 2007

M/s.Tata Steel Ltd. ..Petitioner.

V/s.

The Union of India & Ors. ..Respondents.

Mr.Sridharan with Prakash Shah i/b. PDS Legal for petitioner.

Mrs.Neeta Masurkar with Nisha Valani for respondents.

CORAM : DR. S.RADHAKRISHNAN AND J.P.DEVADHAR, JJ.

DATED : 28TH FEBRUARY, 2007.

P.C. :-

Heard learned counsel for the petitioner and the respondents. Rule, returnable forthwith. The learned counsel for respondents waives service. By consent of the parties, petition is taken up for final hearing.

2. By this petition, petitioner is challenging the order of CESTAT dated 12th September, 2006 whereby CESTAT has directed the petitioner to make a pre-deposit of Rs.75 lakhs out of the total duty liability of Rs.3.91 crores.

3. The main contention of the petitioner is that there has been a substantial expansion of the unit, which produces stranded wire. The learned counsel for the petitioner has pointed out that the original unit for stranded wire was set up in 1994-95 and the production with regard to standard wire was 9890 M.T. whereas in the year 2004-05 the production had increased to 21,034 M.T. He also drew our attention to the order passed in order in original wherein it is clearly observed that the production capacity has increased after the original installation on site verification. Even the CESTAT in its earlier order of remand dated 22nd November, 2004 in paragraph 3 has categorically observed that the appellant were right in their contention that the expansion of the capacity to produce High Tensile Stranded Low Relaxation Wire unit alone was to be taken into account while deciding the appellant's claim for project import rate. The overall production capacity was altogether irrelevant. Therefore, the contention of the learned counsel for the petitioner is that the unit has been expanded to produce more than what was being produced originally. Therefore, Mr. Sridharan, the learned counsel pointed out that the petitioners have a prima facie case to argue on this issue based on the material

on record referred to hereinabove and the CESTAT ought to have waived the pre-deposit, hear the appeal on its own merits after waiving the predeposit.

5. The learned counsel for the respondent sought to contend that the petitioner had brought some new machinery having new technology and as such, the same would not amount to substantial expansion. In that behalf, the learned counsel for the respondent has referred to and relied upon two Judgments of the CESTAT in the case of **Tranvancore Titanium Products V/s. Collector of Customs, Cochin** reported in **2002(148) E.L.T. 640 (Tri. Del.)** and **National Newsprint & Paper Mills Ltd. V/s. Collector of Customs, Bombay** reported in **1987 (32) E.L.T. 153 (Tribunal)**. The Judgments referred to and relied upon by the respondents, deal with cases which originally arose prior to the amendment carried out in Project Import Regulations, 1986, dated 3/4/1986, which defines "substantial expansion", hence the same will have no application in this case.

6. Having regard to the facts and circumstances of the case and especially in view of the fact that the petitioner has replaced new machines to increase the capacity to almost threefold and in the light of the

above amendment, we find a prima facie case for arguments.

7. Under these circumstances, we quash and set aside the order dated 20th November, 2004 passed by the CESTAT directing the petitioner to make pre-deposit and also the subsequent order dated 28th March, 2006 refusing to modify the same. We hold that the appeal should be heard on merits without pre-deposit.

8. Learned counsel for the petitioners states that the petitioners are ready to furnish a bank guarantee of any nationalised bank for an amount of Rs.75 lakhs within the period of 4 weeks from today. Thereupon, the appeal shall be heard by the CESTAT strictly on its own merits.

9. The bank guarantee shall be furnished before the Commissioner of Customs (Import), New Customs House, Ballard Estate. Mumbai-400 001.

10. Rule is made absolute in above terms.

(DR.S.RADHAKRISHNAN, J.)

(J.P. DEVADHAR, J.)